

## 21 C.J.S. Courts § 322

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### Courts

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### IX. Court Commissioners

#### C. Procedural Matters

#### § 322. Judicial review or revision of court commissioner actions—Scope of review

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**On a motion to revise a court commissioner's rulings or decisions, the court in which the commissioner serves is to conduct a de novo review.**

On a motion to revise a court commissioner's rulings or decisions, the court in which the commissioner serves is to conduct a de novo review,<sup>1</sup> based upon the evidence and issues presented to the commissioner.<sup>2</sup> While revision is much like an appeal, the judge is not required to defer to the fact finding discretion of a court commissioner like an appellate court would defer to a subordinate court's exercise of fact finding discretion on appeal.<sup>3</sup> Review is not limited to a determination of whether a commissioner's findings and order are supported by substantial evidence,<sup>4</sup> and the court may decide to acquit a defendant simply because the judge evaluates the evidence differently than the commissioner did.<sup>5</sup>

The judge is limited to a review of the evidence and issues presented to the commissioner and correctly refuses to consider new issues and new evidence offered on the motion for revision.<sup>6</sup> The court may, however, remand the case to the commissioner for further proceedings, including the taking of further evidence, without finding that any error occurred in the proceedings before the commissioner.<sup>7</sup>

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Footnotes

1 La.—[Autrey v. Energy Corp. of America, Inc.](#), 594 So. 2d 1354 (La. Ct. App. 3d Cir. 1992), writ denied, 596 So. 2d 197 (La. 1992).

Wash.—[In re Marriage of Dodd](#), 120 Wash. App. 638, 86 P.3d 801 (Div. 3 2004).

**No live testimony**

Where the evidence before the court commissioner does not include live testimony, then the judge's review of the record is *de novo*.

Wash.—[In re Marriage of Moody](#), 137 Wash. 2d 979, 976 P.2d 1240 (1999).

2 Wash.—[State v. Ramer](#), 151 Wash. 2d 106, 86 P.3d 132 (2004).

3 Wash.—[In re Marriage of Dodd](#), 120 Wash. App. 638, 86 P.3d 801 (Div. 3 2004).

4 Wash.—[In re Smith](#), 8 Wash. App. 285, 505 P.2d 1295 (Div. 3 1973).

5 Wash.—[State v. Wicker](#), 105 Wash. App. 428, 20 P.3d 1007 (Div. 1 2001).

6 Wash.—[In re Marriage of Moody](#), 137 Wash. 2d 979, 976 P.2d 1240 (1999).

7 Wash.—[State v. Wicker](#), 105 Wash. App. 428, 20 P.3d 1007 (Div. 1 2001).

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